

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-09-SE-246
	)	Acct. No. 201132100013
XO Communications, LLC	)	FRN No. 0014917959
	)	

**ORDER**

**Adopted: December 9, 2010**

**Released: December 10, 2010**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and XO Communications, LLC (“XO”). The Consent Decree terminates an investigation by the Bureau against XO for possible violations of Part 4 of the Commission’s Rules (“Rules”)<sup>1</sup> regarding the reporting of network outages.
2. The Bureau and XO have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.
3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.
4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether XO possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.
5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and Sections 0.111 and 0.311 of the Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.
6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.
7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Steve Nocella, Senior Vice President, Network Services, XO Communications, LLC, 13865 Sunrise Valley

---

<sup>1</sup> 47 C.F.R. § 4.1 *et seq.*

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

Drive, Herndon, Virginia 20171, and to counsel for XO Communications, Todd D. Daubert, Esq., SNR Denton US LLP, 1300 K Street, NW, Suite 600, East Tower, Washington, DC 20005-3364.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-09-SE-246
	)	Acct. No. 201132100013
XO Communications, LLC	)	FRN No. 0014917959
	)	

**CONSENT DECREE**

The Enforcement Bureau (the “Bureau”) and XO Communications, LLC (“XO”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into XO’s compliance with the Commission’s regulations in 47 C.F.R. Part 4 regarding the reporting of network outages.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
  - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Compliance Plan” means the program described in this Consent Decree at Paragraph 9.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigation” means the investigation initiated by the Bureau’s May 21, 2010 Letter of Inquiry<sup>1</sup> regarding XO’s compliance with the Commission’s regulations in Part 4 of its Rules regarding the reporting of network outages.
  - (h) “Parties” means XO and the Bureau, and each is a “Party”.

---

<sup>1</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Heather Burnett Gold, Senior Vice President, External Affairs, XO Communications (May 21, 2010) (“LOI”).

- (i) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.
- (j) “XO” means XO Communications, LLC, its affiliates, its predecessors-in-interest and successors-in-interest.

## II. BACKGROUND

2. Under Section 4.9(f) of the Rules, wireline communications providers must report to the Commission an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices and facilities; or (4) potentially affects a 911 special facility. Upon discovery of such an outage, wireline service providers must file an electronic Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Outage Report within 30 days.

3. XO is a wireline communications provider as defined in the Rules and is subject to the network outage reporting regulations in Part 4 of the Rules.

4. On May 21, 2010, the Bureau issued a Letter of Inquiry (“LOI”) initiating an Investigation regarding XO’s outage reporting procedures and XO’s compliance with the Commission’s outage reporting rules.<sup>2</sup> On June 16, 2010, XO requested an extension for submitting a response to the LOI.<sup>3</sup> The Bureau granted the extension on June 17, 2010.<sup>4</sup> On July 9, 2010, XO submitted a response to the LOI.<sup>5</sup>

## III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** XO agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of

---

<sup>2</sup> See LOI.

<sup>3</sup> E-mail from Todd D. Daubert, Esq., Sonnenschein Nath & Rosenthal, LLP to Kevin M. Pittman, Esq., Spectrum Enforcement Division, Enforcement Bureau (June 16, 2010).

<sup>4</sup> E-mail from Kevin M. Pittman, Esq., Spectrum Enforcement Division, Enforcement Bureau, to Todd D. Daubert, Esq., Sonnenschein Nath & Rosenthal, LLP (June 17, 2010).

<sup>5</sup> Letter from Todd D. Daubert, Esq., Sonnenschein Nath & Rosenthal, LLP, to Marlene H. Dortch, Federal Communications Commission, Kevin M. Pittman, Esq., Spectrum Enforcement Division, Enforcement Bureau (July 9, 2010).

a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation, XO agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against XO concerning the matters that were the subject of the Investigation. The Bureau further agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any proceeding, formal or informal, or take any action on its own motion against XO with respect to XO's basic qualifications, including its character qualifications, to be a Commission licensee.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, XO agrees that it will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure XO's future compliance with the Commission's regulations in Part 4 of its Rules regarding the reporting of disruptions to communications. The Compliance Plan will include, at a minimum, the following components:

(a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, XO shall designate a Compliance Officer who will be responsible for administering the Compliance Plan.

(b) **Compliance Training Program.** XO shall establish and maintain an FCC outage reporting training program, as detailed below, for all employees who are responsible for analyzing technical information regarding XO's network outages, entering information into any XO database(s) and/or record(s) that form the basis of XO's reporting of network outages to the Commission, and compiling and/or submitting XO's outage reports to the Commission.<sup>6</sup>

i. XO's Compliance Training Program shall address, at a minimum, the Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. XO's Compliance Training Program shall also address the methods and procedures adopted by XO to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the outage reporting Rules. The training program shall also include information on the potential internal and regulatory consequences of failing to comply with XO's methods and procedures and/or the FCC's outage reporting requirements.

---

<sup>6</sup> Under this provision, XO will not be required to provide outage reporting compliance training to employees other than those whose responsibilities include analyzing technical information regarding XO's network outages, entering information into XO's database(s) and/or record(s) that form the basis of XO's reporting of network outages to the Commission, and compiling and/or submitting XO's outage reports to the Commission.

ii. XO shall provide the foregoing outage reporting training to all of the employees identified above within two months of the Effective Date, and will update the training, and require retraining, at least annually. XO will also provide training to all new employees responsible for these activities within thirty (30) days of the start of their employment.

iii. XO shall update and enhance the foregoing training regarding the FCC's outage reporting requirements as appropriate and necessary.

- (c) **Compliance Reports.** XO shall file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of XO, stating that the Compliance Officer has personal knowledge: (i) that XO has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 4.9(f) of the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) that XO has been utilizing those procedures since the development of the Compliance Plan, and in any event no later than thirty (30) days after the Effective Date; and (iii) that XO is not aware of any instances of noncompliance. The certification must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of XO, shall provide the Commission with a detailed explanation of: (i) any instances of noncompliance with this Consent Decree or the Rules, and (ii) the steps XO has taken or will take to remedy each instance of noncompliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Kevin M. Pittman at Kevin.Pittman@fcc.gov.

- (d) **Termination Date.** Unless stated otherwise, the provisions of this Paragraph 9 of the Consent Decree will expire twenty-four months (24) from the Effective Date.

10. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against XO or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by XO with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution.** XO agrees that it will make a voluntary contribution to the United States Treasury, in the amount of sixty-eight thousand dollars (\$68,000). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the

Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). XO will also send electronic notification on the date said payment is made to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and to Kevin M. Pittman at Kevin.Pittman@fcc.gov.

12. **Waivers.** XO waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. XO shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither XO nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and XO shall waive any statutory right to a trial *de novo*. XO, however, may present evidence that it has not violated the Consent Decree. In addition, nothing in this Consent Decree shall preclude XO from petitioning the Commission for relief as to future obligations under Part 4 of the Commission's Rules. XO hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which XO does not expressly consent), that provision will be superseded by such Commission Rule or Order.

15. **Successors and Assigns.** XO agrees that the provisions of this Consent decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, XO does not admit or deny noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
P. Michele Ellison  
Chief  
Enforcement Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Nocella  
Senior Vice President  
Network Services  
XO Communications, LLC

\_\_\_\_\_  
Date